

After reviewing the record and considering the arguments, the Appeals Board finds and concludes as follows:

- (1) The issues raised by respondent relate to whether claimant's injury arose out of and in the course of his employment and are, therefore, subject to review by the Appeals Board. K.S.A. 1996 Supp. 44-534a.
- (2) The Appeals Board finds and concludes from the evidence that claimant's heart attack was caused in part by unusual exertion in the course of claimant's employment. The evidence established that claimant suffered a myocardial infarction on October 5, 1996, after participating in physical exercises required for members of the SCAT Team. While the extent of exertion was not totally unique in claimant's job responsibilities, the Appeals Board concludes that it was unusual. The Appeals Board also finds from the evidence, principally the opinion of Richard C. Preston, M.D., that the exertion was of a causal factor in claimant's myocardial infarction.
- (3) The Appeals Board concludes and finds that the termination of benefits for refusal to cooperate with medical treatment, when ordered without a hearing, does exceed the authority of the Administrative Law Judge.

The evidence included medical records which show the treating physician advised claimant to stop smoking as part of his treatment after his heart attack. The records, in fact, suggest the treating physician may not wish to participate further because claimant had not complied with that recommendation. Termination of benefits on that basis was not made an issue at the preliminary hearing. The Administrative Law Judge, however, after reviewing the medical records, made the decision to terminate the benefits. K.A.R. 51-9-5 provides:

"An unreasonable refusal of the employee to submit to medical or surgical treatment, where the danger to life would be small and the probabilities of a permanent cure great, will justify denial or termination of compensation beyond the period of time the injured worker would have been disabled had he or she submitted to an operation but only after a hearing as to the reasonableness of such refusal."

Without expressing opinion regarding the reasonableness of the decision by the Administrative Law Judge, the Appeals Board concludes it cannot be made without a hearing. That portion of the Order which terminates benefits for failure to cooperate with medical care must be reversed.

The record shows claimant was taken off work from October 6, 1996 through December 8, 1996. He was released to return and did return to work on December 9 and worked until the Monday before the preliminary hearing of February 6, 1997 when claimant experienced problems and was again taken off work. Claimant has been paid temporary

total disability benefits for approximately two months from October 6, 1996 to December 8, 1996. Claimant is here awarded temporary total disability benefits at the rate of \$264.81 per week, based on the stipulated average weekly wage of \$397.20, from February 4, 1997, until claimant is released by his authorized treating physician to return to work or reaches maximum medical improvement, whichever comes first.

WHEREFORE, the Appeals Board finds and concludes that the Order by Administrative Law Judge Bruce E. Moore, dated February 20, 1997, should be, and the same is hereby, modified as stated above.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS
Richard A. Boeckman, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director